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the Proposed Putative Classes*

BEFORE THE UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN “CLEAN
DIESEL” MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

This Document Relates To:
ALL ACTIONS.

**RESPONSE TO PRETRIAL ORDER NO. 1
REGARDING APPOINTMENT OF SPECIAL SETTLEMENT MASTER**

Pursuant to this Court's Pretrial Order No. 1 [ECF No. 77], Plaintiffs in *Stricklin, et al. v. Volkswagen Group of America, Inc., et al.*, No. 2:15-cv-07431-DOC-SP (C.D. Cal.), respectfully submit the following neutrals for the Court's consideration for appointment as Special Settlement Master.

Kenneth R. Feinberg Mr. Feinberg is a prominent mediator and arbitrator. In his more than 40 years of practice, Mr. Feinberg has resolved many challenging and widely-known disputes. Mr. Feinberg has recent experience with automotive product liability cases. He served as the Fund Administrator responsible for the design, implementation and administration of the claims process for the GM Ignition Switch Compensation Program. Mr. Feinberg previously served as Special Master before this Court in *In re Informix Corporation Securities Litigation*. Mr. Feinberg was also appointed by the Court as Settlement Administrator in the *International Air Transportation Surcharge* antitrust litigation.

Mr. Feinberg has also served as a mediator or special settlement master in complex class actions in other Federal and State courts, including the Agent Orange class action and the *American Express Anti-Steering Rules* antitrust litigation. He has designed, implemented and administered programs for the distribution of settlement proceeds to eligible claimants in high-profile matters, including *In re: United States Securities and Exchange Commission v. American International Group, Inc.*, *In re: United States of America v. Computer Associates International, Inc.*, the September 11 Fund, the Gulf Coast Fund, the Hurricane Katrina Fund, the Sandy Hook Fund, the Virginia Tech Fund, and the Boston One Fund.

A copy of Mr. Feinberg's curriculum vitae is attached hereto as Exhibit A.

Hon. Edward A. Infante (Ret.) Judge Infante formerly served as Chief Magistrate Judge of the United States District Court, Northern District of California. Judge Infante currently is a neutral with JAMS Arbitration in San Francisco. Judge Infante has more than 30 years of dispute resolution experience, having conducted over 3,000 settlement conferences, including in consumer class actions and mass tort litigation.

Judge Infante has served as mediator in the resolution of multidistrict litigation, including *In re Methionine Antitrust Litigation*, and complex class actions, such as *In re McKesson HBOC*,

1 *Inc. Securities Litigation* in which the undersigned counsel served as Court-appointed Lead
2 Counsel.

3 A copy of Judge Infante's curriculum vitae is attached hereto as Exhibit B.

4 **Hon. Fern M. Smith (Ret.)** Judge Smith served as a Federal District Court Judge for the
5 United States District Court, Northern District of California. Judge Smith currently is a neutral
6 with JAMS Arbitration in San Francisco. This Court previously appointed Judge Smith as Special
7 Master in the Celebrex and Bextra multidistrict litigation. Additionally, Judge Smith has been
8 appointed as Special Master in several other complex multidistrict litigations, including in this
9 District in the *TFT-LCD (Flat Panel) Antitrust Litigation* before Judge Illston.

10 A copy of Judge Smith's curriculum vitae is attached hereto as Exhibit C.

11 Dated: December 10, 2015

Respectfully submitted,

12 BERNSTEIN LITOWITZ BERGER
13 & GROSSMANN LLP

14 /s/ Blair A. Nicholas

15 BLAIR A. NICHOLAS

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EXHIBIT A

KENNETH R. FEINBERG

Mr. Feinberg was appointed by the Secretary of the Treasury to be Special Master of the Federal Kline-Miller Law overseeing reform of private multi-employer pension plans. From 2009 to 2010 he also served Treasury as the Special Master for TARP Executive Compensation. In this capacity, he was responsible for determining annual compensation packages for senior corporate officials at companies that received the most taxpayer financial assistance.

He was previously designated by the Obama Administration and British Petroleum (BP) to serve as the Administrator of the Gulf Coast Claims Facility following the oil spill explosion in the Gulf of Mexico in 2010.

He was previously appointed by the Attorney General of the United States to serve as the Special Master of the Federal September 11th Victim Compensation Fund of 2001. In this capacity, he developed and promulgated the Regulations governing the administration of the Fund and administered all aspects of the program, including evaluating applications, determining appropriate compensation and disseminating awards.

During 2014- 2015, Mr. Feinberg was the Fund Administrator responsible for the design, implementation and administration of the claims process for the GM Ignition Switch Compensation Program. He has also served as the Administrator of the compensation programs following the tragedies at Virginia Tech University, the Aurora, Colorado movie shootings, the Sandy Hook Elementary School shootings, and the Boston Marathon bombings.

Mr. Feinberg was appointed in June of 2007 as the Distribution Agent *In Re: United States Securities and Exchange Commission v. American International Group, Inc.*, responsible for the design and implementation of a Plan for the distribution of a Fair Fund settlement of \$800 million to eligible claimants. He has also served as Fund Administrator in other prominent settlements including: *In Re: United States of America v. Computer Associates International, Inc.* (responsible for the design and implementation of a restitution fund of \$275 million); *In Re: International Air Transportation Surcharge Antitrust Litigation* (responsible for the design and administration of a \$200 million fund); *In Re: Zyprexa Product Liability Litigation* (a \$700 million settlement fund); and *In Re: Latino Officers Association City of New York, Inc., et al., v The City of New York, et al.* (a \$17 million settlement fund).

Mr. Feinberg is an attorney and one of the nation's leading experts in mediation and alternative dispute resolution. He received his B.A. *cum laude* from the University of Massachusetts in 1967 and his J.D. from New York University School of Law in 1970, where he was Articles Editor of the *Law Review*. He was a Law Clerk for Chief Judge Stanley H. Fuld, New York State Court of Appeals from 1970 to 1972; Assistant United States Attorney, Southern District of New York from 1972 to 1975; Special Counsel, United States Senate Committee on the Judiciary from 1975 to 1980; Chief of Staff to Senator Edward M. Kennedy from 1977 to 1979; Partner at Kaye, Scholer, Fierman, Hays & Handler from 1980 to 1993; and founded The Feinberg Group, LLP in 1993.

Mr. Feinberg has been a Court-Appointed Special Settlement Master, mediator and arbitrator in thousands of disputes. He was also one of three arbitrators selected in 1999 to determine the fair market value of the original Zapruder film of the Kennedy assassination and was one of two arbitrators selected to determine the allocation of legal fees in the Holocaust slave labor litigation.

Mr. Feinberg was a member of the Presidential Advisory Commission on Human Radiation Experiments from 1994 to 1998; the Presidential Commission on Catastrophic Nuclear Accidents from 1989 to 1990 and the Carnegie Commission Task Force on Science and Technology in Judicial and Regulatory Decision Making from 1989 to 1993. He previously chaired the American Bar Association Special Committee on Mass Torts from 1988 to 1989. He is also a national arbitrator for the American Arbitration Association.

Mr. Feinberg serves on the Board of the RAND Institute and is Chairman of the Board of the John F. Kennedy Presidential Library Foundation in Boston. He is also the former President of the Washington National Opera.

He has had a distinguished teaching career as Adjunct Professor of Law at Harvard, Georgetown, The University of Pennsylvania, New York University, the University of Virginia and Columbia. He has also taught as a visiting lecturer at various other law schools, including UCLA, Vanderbilt, and Duke.

Mr. Feinberg was designated "Lawyer of the Year" by the *National Law Journal* (December, 2004). He is listed in "Profiles in Power: The 100 Most Influential Lawyers in America" (*National Law Journal*, May 2, 1988; March 25, 1991; April 4, 1994; June 12, 2000; June 19, 2006). He is the author of numerous articles and essays on mediation, mass torts and other matters and is the author of two books: What is Life Worth? The Unprecedented Effort to Compensate the Victims of 9/11 (Public Affairs 2005); Who Gets What: Fair Compensation After Tragedy and Financial Upheaval (Public Affairs 2012).

EXHIBIT B



Hon. Edward A. Infante (Ret.)

Hon. Edward A. Infante (Ret.) is known for his ability to mediate complex cases involving a wide range of issues. A former Chief Magistrate Judge of the U.S. District Court, Northern District of California, Judge Infante has more than 30 years of dispute resolution experience. He has particular expertise in complex business litigation, securities class actions, securities, employment, intellectual property, and antitrust cases.

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Video-
Infante featured in JAMS
mediation video

*Recognized as a
Northern California Super
Lawyer, ADR Category,
San Francisco Magazine,
2009-2014*

*Recognized as a "Top
Master," Top California
Neutrals List, Daily
Journal, 2013*

*Recognized as a Top
California Neutral, Daily
Journal, 2003-2004,
2006-2012*

*Recognized as the Best
Neutral in the Bay Area
(2007-2008) and as one
of top Best Neutrals in the
Bay Area (2009-2012),
through an open survey
of attorneys, The
Recorder*

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ADR Experience and Qualifications

- Conducted over 3,000 settlement conferences in all types of civil litigation including securities fraud and shareholder class actions, intellectual property disputes, and employment cases
- Resolved thousands of pretrial matters including discovery, pleading, and summary judgment motions, and presided over numerous jury trials
- Served as Special Master in several complex federal cases; Authored Chapter 53, entitled "Masters," in *Moore's Federal Practice* (copyright 1997) -- the chapter discusses the appointment and procedures of Special Masters

Representative Matters

- *In re McKesson HBOC, Inc. Securities Litigation*, settled for \$960 million, one of the largest securities fraud class settlements ever reported
- *Nikon v. ASML*, international patent dispute involving multiple patents resulting in complex cross-licensing agreements
- *In re Methionine Antitrust Litigation*, multi-district litigation alleging international price fixing conspiracy brought by livestock producers and feed companies, settled for \$107 million
- *Sun Microsystems v. Microsoft Corp.*, copyright and licensing dispute involving the JAVA programming language
- *Applied Materials Inc. v. Advanced Semiconductor Materials*, a multi-million dollar patent infringement dispute between competitors
- *e-Bay v. Reverse Auction.com*, trade secret/unfair business competition case between competitors
- **Securities Class Actions:** involving over 100 NASDAQ and NYSE companies
- **Consumer Class Actions:** mediated a national consumer class action allegedly involving abusive and fraudulent lending practices against a major lending institution
- **Employment:** mediated race, gender, and age discrimination suits; mediated sexual harassment, wrongful discharge, and other employment related breach of contract disputes; mediated numerous class actions including wage and hour claims
- **Insurance:** mediated coverage disputes involving multi parties and bad faith allegations
- **Business/Commercial:** mediated all types of business suits involving breach of contract, accounting, valuation, and breach of warranty claims

Honors, Memberships, and Professional Activities

- Recognized as a "Top California Neutral," *Daily Journal*, 2003-2004, 2006-2012
- Recognized as the Best Neutral in the Bay Area (2007-2008) and as one of top Best Neutrals in the Bay Area (2009-2012), through an open survey of attorneys, *The Recorder*
- Member, Federal Magistrate Judges Association, 1973-present; (President, 1981, 1982; Vice President, 1979-1980); Moderator and panelist in various federal practice seminars including the Federal Practice Institute, 1983-1993
- Adjunct professor at Santa Clara University Law School: lectured in evidence, judicial administration, and alternative dispute resolution, 1990-2002

Background and Education

- Chief Magistrate Judge, U.S. District Court, Northern District of California, 1990-2001
- United States Trustee, U.S. Dept. of Justice, Region XV Southern District of California, District of Hawaii, Territory of Guam, and Commonwealth of the Northern Marianas Islands, 1988-1990
- Partner, Schall, Boudreau & Gore, San Diego, CA, 1986-1988
- U.S. Magistrate Judge, U.S. District Court, Southern District of California, 1972-1986
- J.D., Boston University School of Law, 1965

- A.B., Boston College, 1962

EXHIBIT C



Hon. Fern M. Smith (Ret.)

Hon. Fern M. Smith (Ret.) has served as a Federal District Court Judge, settling and adjudicating complex cases involving a wide range of issues. Judge Smith also served as Director of the Federal Judicial Center – the primary training and educational institute for federal judges – where she was one of the primary editors of the MCL 4th (Manual of Complex Litigation). She combines 30 years of distinguished judicial and legal experience with her unique ability to bring about the successful resolution of complex, multi-party matters.

ADR Experience and Qualifications

Judge Smith served as a trainer and facilitator on judicial administration and reform with judges in India, Egypt, Bolivia, Mexico, Tunisia, Israel, Jordan, Greece, Italy, Russia, Morocco, Thailand, China, Turkey, the Netherlands, Slovenia, and Bahrain emphasizing commercial dispute resolution and case management procedures. In her 17 years on the Federal Bench, Judge Smith presided over every case type within federal jurisdiction. Representative cases are listed below.

Representative Matters

Judge Smith handled the following representative matters at JAMS.

- Presided over numerous **Mock Trials** in advance of Bench Trials or Markman hearings, several involving the **pharmaceutical** industry, often concerning **license agreements** or **Hatch-Waxman Act** cases with underlying **intellectual property** questions
- Chaired **government/public policy** tripartite arbitration involving disputes over settlement payments between 35 states and major tobacco companies
- Arbitrated and chaired numerous cases involving **Intellectual Property** related breaches of contract, royalty, and licensing disputes
- Arbitrated to a multi-million dollar award a **pharmaceutical** company breach of contract matter
- Ongoing panel member on a **sports/entertainment** tripartite appellate panel arising from the collective bargaining agreement between the National Football League and the National Football League Players Association
- Mediated and settled a **consumer product class action** involving fraudulent advertising
- Successfully mediated a **professional liability** case regarding alleged accounting malpractice
- Mediated and resolved a long standing **will contest** involving multiple real estate holdings
- Successfully resolved a dispute over the **employment termination** of a highly compensated executive
- Mediated and settled a **consumer class action** involving a consumer technology product
- Successfully mediated a **consumer class action** related to alleged false advertising by a financial institution
- Mediated and settled a union matter concerning **collective bargaining** in the transportation industry
- Mediated and resolved an **employment dispute** involving alleged discrimination in the medical industry
- Successfully settled a **copyright infringement** claim by an author's estate against a licensee
- Successfully resolved a **contract dispute** over the sale of a helicopter

Judge Smith presided over and handled the following representative cases while serving in the federal judiciary.

- **Anti-Trust:** Heard *In re: Citric Acid Litigation* involving price fixing allegations against numerous domestic and international companies; Multi-million dollar fines assessed in related criminal cases
- **Environmental/Toxic Tort:** Interpreted CERCLA in *U.S. v. Allied Signal Corp.* finding private parties entitled to judicial review of Navy's remediation plan
- **Insurance:** Adjudicated numerous insurance coverage matters, including first and third party issues. Authored 11th Circuit opinion in *State Farm v. Steinberg*, clarifying rights to sue under "advertising injury"
- **Intellectual Property:** Presided over bench trial of *Galoob v. Nintendo*, involving allegations of copyright infringement, resulting in plaintiff's judgment of \$15 million in damages; Presided over *Nintendo v. Atari*, a copyright and patent infringement case involving cross-claims of anti-trust and

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"After 19 years on the bench, I am convinced that 95% of litigation is best resolved through ADR. My approach is to use my judgment and experience to facilitate a resolution that works best for the parties involved."

Recognized as a Top California Neutral, Daily Journal, 2010

Case Manager

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misuse of patents; Conducted *Markman* hearing in *Genentech v. Amgen*, construing three pioneer biotech patents

- **Labor/Employment:** Decided *Dillingham v. Sonoma* and *Assoc. Builders v. Curry*; Judgment affirmed by the U.S. Sup. Ct.
- **Mass Torts:** Specialized in complex product liability litigation ranging from aviation to medical devices to pharmaceuticals
- **Securities Class Actions:** Decided *In re: Silicon Graphics*, interpreting Private Securities Reform Litigation Act
- **Torts:** Presided over court trial alleging government negligence for plane crash into Sun Valley Mall

Honors, Memberships, and Professional Activities

- Recognized as a Top California Neutral, *Daily Journal*, 2010
- Chair, U.S. Judicial Conference Committee on International Judicial Relations, 2003-2005
- Chair, U.S. Judicial Conference Advisory Committee on the Rules of Evidence, 1996-1999
- Member, U.S. Judicial Conference Advisory Committee on the Rules of Evidence, 1993-1996
- Member, Executive Committee of the Ninth Circuit Judicial Conference, 1994-1996
- Member, Ninth Circuit State-Federal Judicial Council, 1990-1993
- Member, California Judicial Council's Advisory Task Force on Gender Bias, 1988-1990
- Member, California Judicial Council, 1987-1988
- Advisory Boards: American Bar Association Central European and Eurasian Law Initiative; American Society of International Law; American Judicature Society-National Jury Center Advisory Committee; Association of Business Trial Lawyers-Board of Governors; The National Academies-Science, Technology, and Law Program; Stanford Law School-Board of Visitors

Background and Education

- Mediator and Arbitrator, JAMS, 2005-present
- Judge, U.S. District Court, Northern District of California, San Francisco, CA, 1988-2005
- Director, Federal Judicial Center, Washington, D.C., 1999-2003
- Judge, Superior Court of the State of California, in and for the County of San Francisco, San Francisco, CA, 1986-1988
- Partner, Bronson, Bronson & McKinnon, 1981-1986, (Associate, 1975-1981)
- J.D., Stanford Law School, 1975
- B.A., Stanford University, Graduated with Distinction, Phi Beta Kappa, 1972